

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket #1762
)	
Jack Porter,)	
Correctional Officer)	
[REDACTED])	
[REDACTED])	
Employee # [REDACTED])	
STAR #3855)	

DECISION

THIS MATTER COMING ON to be heard pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction: The Respondent, Jack Porter, hereinafter "Respondent", was appointed a Correctional Officer on March 16, 1988. On or about December 19, 2013 the Respondent was assigned to the External Operations Unit of the Cook County Department of Corrections ("CCDOC") as a Correctional Officer. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; and

Each member of the Cook County Sheriff's Merit Board, hereinafter "Board", has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

The Board has jurisdiction of the subject matter and of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was given constructive notice of the Complaint and constructive notice of hearing.

The Board has heard the evidence presented by the Sheriff and the Respondent, and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background: By a complaint dated May 20, 2014 and filed with the Cook County Sheriff's Merit Board the Sheriff of Cook County sought the termination of Correctional Officer Jack Porter, Star number 3855. The complaint alleged that on December 19, 2013, Respondent, while on duty was ordered to take a Random and Mandatory Drug Test, in accordance with the Sheriff's Drug-Free Workplace Policy. On December 19, 2013 Respondent complied with the order and a urine specimen was taken from the Respondent. The drug test was completed and Benzoylcegonine, a cocaine metabolite, was present in

the Respondent's system at the time of the test and was evidenced in the Phamatech Laboratories' Report dated December 27, 2013. After notification, the Respondent requested that the sample be retested by a different laboratory. Upon the retest by an independent laboratory, the presence of Benzoylecgonine, a cocaine metabolite, was confirmed to be in the Respondent's urine sample. These alleged actions violated general orders, Sheriff's orders rules of conduct and Cook County Sheriff's Department Merit Board Rules and Regulations, specifically:

Sheriff's Order 11.2.23.0 (effective date: June 28, 2013) CCSO Drug- Free Workplace Policy; I., II. A. and B. 1, 2, 3, and 4; III., VI., and VIII.; Sheriff's Order 11.2.20.0, I., II., VI. A. 1, B. 2, and Cook County Sheriff's Department Merit Board Rules and Regulations Article X, Paragraph B. 1, 2, and 3

Issues Presented: Whether the actions of the Respondent violated any of the General orders, Sheriff's orders and rules and regulations set forth above and what if any discipline is appropriate if a violation occurred.

Resolution of Issues Presented: The Merit Board finds that violations of all of the above mentioned general orders, Sheriff's orders and rules and regulations did occur, and that the Respondent should be separated from employment.

Findings of Fact: Evidentiary hearings in this matter were held October 5, 2015, October 6, 2015, October 7, 2015, November 12, 2015, as well as February 23, 2016 before Merit Board Member Vincent T. Winters. Present was the Sheriff by counsel, Respondent and counsel. Witnesses who testified for the Sheriff were [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. Witnesses who testified for the Respondent were [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] the Respondent, Jack Porter. Sheriff's Exhibits 1 through 31 were entered into the record. Respondent's Exhibit's 1 through 28 were entered into the record.

Evidence:

Witness [REDACTED] testified that he works as a Lieutenant for the Cook County Sheriff's Department, Department of Corrections in External Operations and that he has worked there for over 25 years. Lieutenant [REDACTED] testified that on December 19, 2013 the Respondent, one of his employees, was selected for drug testing. [REDACTED] then notified Respondent and told him to report for the drug test by handing him the drug testing notification form. [REDACTED] also testified that in his time as a lieutenant none of his employees tested positive for a controlled substance because they were exposed to it while working at the Cook County Hospital. On cross-examination, [REDACTED] testified that he has given the Respondent special assignments.

Witness [REDACTED] testified that he is the supervisor of the Sheriff's Drug Testing Unit and has been in that position since May of 2012. [REDACTED] testified that his job duties are processing drug specimen results, generate the random selection for employee drug testing, process invoices, maintain file systems and maintain staffing levels. He currently supervises five employees. [REDACTED] testified that the Drug Testing Unit collects urine specimens for drug testing, he explained how the technicians are trained and that approximately twelve individuals are randomly tested each day. [REDACTED] went on to explain the procedure when employee's submit to a drug test and to the best of his knowledge all the proper policies and protocols regarding selection and submission of the Respondent's specimen

were followed. [REDACTED] then explained that at the end of each day a courier comes into pick up all the specimens and send them to an outside contractor, Phamatech, located in San Diego, California. [REDACTED] testified that he was notified by Phamatech that the Respondent's test came back positive for cocaine metabolite and that he prepared a packet for the Office of Professional Review and opened a case with OPR. [REDACTED] testified that the positive results that he received were Jack Porter's based on the specimen ID, of [REDACTED], that was assigned to Porter and comes off the chain of custody document. The chain of custody document has various sections that indicates where the specimen goes to. [REDACTED] also explained that each specimen bottle has a JDE number, Porter's was [REDACTED], along with an indicator of gender, a section for the collector's name., along with other identification numbers and letters. He went on to testify that the quantitation for Porter's results were 3038 nanograms per milliliter for cocaine metabolite or benzoylecgonine and that he prepared a notification of confirmed positive drug test on December 27, 2013 and sent it to [REDACTED], executive director of OPR. [REDACTED] testified that Porter selected ACL Laboratories, in West Allis, Wisconsin, for a specimen retest which also came back positive for cocaine metabolite.

On cross examination [REDACTED] was asked about Porter's RT number or control number which was [REDACTED] which cannot be changed and which comes from the Cook County Sheriff's Drug Testing Unit. Phamatech generated a form in which they had a typo- the [REDACTED] was [REDACTED] and [REDACTED] explained that the lab only works off the specimen ID number. On re-direct [REDACTED] testified that the lab uses their internal control or specimen ID number.

[REDACTED] testified that he is currently a technician in the Cook County Sheriff's Drug Testing Unit and has been there for eleven years. [REDACTED] described that he performs random drug tests on Cook County Sheriff's Department employees and explained the process for collecting specimens. He testified that when the employee is ready to provide a specimen he gets a chain of custody form and that he escorts the employee into an office where they select a specimen bottle from a bin. The employee gets their picture taken and they are positively identified as the person on the form by showing their driver's license. [REDACTED] testified that he explains the process to the employee and that the employee can inspect the bottle. Once the employee provides the specimen, [REDACTED] and the employee go back into the office, record the time, temperature and then they seal the up the bottle with a chain of custody form. Once this is complete the employee initials the label, puts it in a transportation pouch and seals it up. They then complete an affidavit form and then put it in the refrigerator. [REDACTED] went on to explain the protocols that are in place to ensure the chain of custody and to prevent tampering of a specimen. [REDACTED] testified that Porter's sample was not split nor are any other specimens that are collected.

[REDACTED] testified that he is currently a technician in the Cook County Sheriff's Drug Testing Unit and has been employed there for six years. He described his daily job duties which mirrored [REDACTED] He explained that part of his duties are to generate paperwork regarding when specimens are picked up by couriers. He testified that his role in Porter's specimen was that he was working when the courier picked up the specimen but that he was not present when Porter gave his sample.

[REDACTED] testified that he is currently employed by the Cook County Sheriff's Office of Professional Review and that he has been employed for three-and-a-half years. His job duties are to investigate any allegations or complaints against the Sheriff's Office and its employees. [REDACTED] testified that he was assigned to investigate Jack Porter and that he reviewed the documents that he received from the Drug testing unit and that he spoke with Porter and verified his prescription history. [REDACTED] testified that he de-deputized Porter, took his statement and filled out the paperwork to have the sample re-tested.

Once the re-test came back positive, [REDACTED] wrote up the investigation based on the two drug tests, Porter's statement, and the Drug Testing Unit's documentation.

On cross examination [REDACTED] was asked if he was ever trained regarding employee's exposure to prohibited drugs while on the job, which he responded in the negative. [REDACTED] testified that he asked Porter if he had any explanation as to why he tested positive for cocaine's metabolite and he did not provide him with any explanation.

Witness [REDACTED] testified that he is the Vice President of Phamatech and has held that position for ten years. [REDACTED] testified that he is responsible for the entire laboratory operations at Phamatech and went thru his resume, including the fact that he has been qualified as an expert more than one hundred times while testifying in court. [REDACTED] went on to discuss that Phamatech's employees are properly trained in the chain of custody procedures and that the company has on-site inspections by the federal government to ensure that all the instruments are obtaining proper results. Witness then testified that Phamatech did testing for the Cook County Sheriff's Office back in December 2013 and that [REDACTED] was the laboratory director who worked for him. [REDACTED] is no longer employed by Phamatech and did not testify. [REDACTED] testified how the process works when samples are shipped to Phamatech via either UPS, FedEx, or an actual courier. [REDACTED] was asked about the Phamatech Chain of Custody Form and different numbers on the form, specifically the "donor SSN or employee ID no. which was [REDACTED] and the JDE number which was [REDACTED]. [REDACTED] testified that Phamatech does not generate nor assign neither of those numbers nor do they use those numbers in tracking the specimen. The witness testified that they scan the barcode that read [REDACTED] and that was how they know what to test on that sample and who it gets reported to. He went on to explain that each sample gets assigned a number that is unique to Phamatech and that is how the specimen is tracked while in the lab, they never use the [REDACTED] number nor do they ever use the JDE number that is provided by the client to track a specimen. [REDACTED] testified that Phamatech uses the specimen ID number that came on the requisition and the internal laboratory B number to track the specimen while it is at the lab. [REDACTED] testified that [REDACTED] performed the initial testing for Porter's sample and took us thru how [REDACTED] maintained the proper chain of custody and the fact that his sample tested positive for cocaine metabolite and that there was 3038.34 nanograms per mil. [REDACTED] testified that the RT number that was improperly entered incorrectly by a data entry person does not negate nor did affect the results of the test. [REDACTED] was asked whether the time lapse of four days from when the sample was collected until it was received would have any effect on the result and he answered in the negative. He also was asked, based on his experience, whether it was possible that an individual could ingest any airborne cocaine-based anesthetics that would cause the positive results seen in Porter's specimen and he answered no.

On cross examination [REDACTED] was asked more questions about the chain of custody and the Respondent's attorney asked if he had any direct knowledge if the pouch was tampered or whether it was intact. [REDACTED] replied that Phamatech has procedures in place that he signs and verifies that ensures that samples are protected. There was a line of questioning about numbers matching and [REDACTED] answered that all the numbers on the sample matched with the numbers provided by Cook County.

Witness [REDACTED] testified that she is a laboratory screener at Phamatech and has held that position for five years. [REDACTED] testified that some of her job duties include doing the initial testing of samples and that she has received annual training in every year that she has worked for Phamatech. The witness went on to explain that she was the person who did the initial testing for the Respondent's sample and

she walked us through Phamatech internal chain of custody and that it was followed. The witness testified that if the numbers that Phamatech uses in their internal chain of custody did not match then she would have contacted her supervisor, but that the numbers did match. [REDACTED] also testified that on December 23, 2013 all of the machines had been calibrated and had been working properly and that the Respondent's sample was positive for cocaine.

Witness [REDACTED] Andy, testified that he is a GC/MS operator at Phamatech and that he analyzes samples and then reviews the results. He discussed his educational background and training and then testified that he receives annual training for chain of custody protocols. [REDACTED] also testified as to how the GC/MS machine is calibrated and then explained his role in the process. The witness testified that he tested the Respondent's sample and that Phamatech's internal chain of custody was followed and that the sample tested positive for cocaine. After this analysis, the witness testified that he passed the results on to his supervisor.

Witness [REDACTED] testified that she has been employed at ACL Laboratories, in West Allis, Wisconsin for twenty five years and works as a medical technologist. In 2014, the witness testified that her title at ACL was quality coordinator and some of her job duties was to oversee the department's quality program by monitoring QCs, ensuring that instruments and test methods were properly validated and maintained. She also testified that she was an alternate RP, which is a responsible person who is certified under the National Laboratory Certification program and has total responsibility over the lab. The witness testified that ACL Laboratories was doing retesting for the Cook County Sheriff's Office in January of 2014. The witness testified how samples would arrive at the lab and how it was prepared for testing. She went on to testify about ACL's internal chain of custody and that it was followed and that the retest came back positive for cocaine. There was a line of questioning about whether the witness had ever seen results where on a retest the levels of nanograms per milliliter was higher than the original test, [REDACTED] testified that it was rare but could happen.

The Sheriff rested and the Respondent presented his case.

Witness [REDACTED] testified that she is a Circuit court judge and that her mom and the Respondent's mother are BFF's. Witness testified that she believes that the Respondent's character is very good.

Witness [REDACTED] testified that she is a Circuit court judge and that she worked for the Respondent's aunt Judge [REDACTED]. She testified that she has known the Respondent for twenty five years and that he is a courteous and kind person.

Witness [REDACTED] testified that she is a Cook County Department of Corrections officer and works in external operations for Cook County Jail, Stroger Hospital and Fantus Clinic. One of her job duties is to transport inmates back and forth between the jail and either the hospital or the clinic. Witness testified that she walks through the emergency room when transporting inmates and can see procedures and people receiving treatments. Witness testified that she has access to gloves and masks but that the Cook County Sheriff's Office does not issue them. Witness testified that she has known the Respondent for over twenty years and has been the Respondent's partner. Witness also testified that from her perspective the Respondent has good character.

Witness [REDACTED] testified that he is a retired Cook County Sheriff who used to work in external operations. Witness testified that when he worked at Stroger Hospital that he saw procedures and at

certain times he was very close to the actual procedures. Witness testified that the Sheriff does not issue gloves or masks but that individuals can find them in the hospital if they want them. Witness also testified that he also was assigned to the Fantus Clinic, where ear, nose, and throat surgeries took place.

On cross examination Witness testified that inmates were patted down but not while they were having medical procedures done and that he usually wore gloves while he did that to protect himself. Witness also testified that he never supervised the Respondent.

Witness [REDACTED] testified that he is Cook County Department of Corrections officers and has been employed in that capacity for 24 years. Witnesses testified that his assignment in December 2013 was to an outside unit that was an offshoot of Ex Ops where he transfer inmates to and from Stroger Hospital and that when those inmates have surgical procedures he would be right next to the inmates.

Witness [REDACTED] testified that he is a consultant on toxicology and pharmacology. The witness testified about his background and education and was offered as an expert, with no objection. The witness testified that he believed that the Phamatech litigation packet was not definitive and he believed that it was brief. He went on to testify that he believed that the testing was nondefinitive because there were no calibration curves. The witness testified that in all the time that he had been consulting he had only found one substance that gives almost the same mass spectrum as cocaine but that he couldn't find it and that it was hidden in his files. The witness testified that different people and labs have different thresholds for initial screenings for cocaine. He went onto to testify that the Respondent's alleged initial screening numbers were 3,038 nanograms per milliliter and that the alleged retest numbers came back at 5,258 nanograms per milliliter and that in his experience they do not seem to be the same sample but they could be. The witness went onto testify about passive inadvertent ingestion and that because the Respondent would transfer inmates into the ear, nose and throat section of the Fantus clinic that there is a good probability that if the sample was the Respondent's that he was an unknowing victim of inadvertent ingestion of aerosol cocaine.

On cross examination the witness testified that drug testing is not a definitive practice but that the GC/MS drug screen is more definitive and that it is the gold standard of drug testing. The witness went onto testify that he did not know how Phamatech ran their testing or results. He witness was asked about one of the studies that he relied on "Passive Inhalation of Cocaine" and that in this study none of the subjects that were exposed to cocaine had positive urine samples.

Respondent Jack Porter testified that he has been a Cook County Sheriff for over 27 years and he has had multiple assignments within the department. The Respondent testified as to his background, family life and education. The Respondent went on to testify about his time taking inmates to and from Stroger Hospital and Provident Hospital. The Respondent testified that on December 19, 2013 he was escorting an inmate to a clinic when he received a call that his name had come up for a random drug test. He went on to describe how he was picked up and brought over to the testing facility where he gave his sample. When he found out that his drug test came back positive he testified that "it's not really a problem" because he takes prescription medications which he gave to the Investigator. The Respondent testified that it was impossible that he had tested positive for cocaine because he does not do cocaine.

On cross examination the Respondent testified that he would wear gloves and masks as much as he could to protect himself. The Respondent was asked questions about where he was assigned on December 17, 2013 and he testified that he was assigned to an inmate that was not in the ear, nose and

throat clinic. The Respondent testified that December 17th, 18th, and 19th of 2013 he did not remember if he was assigned to an inmate that was in the ear, nose and throat clinic but he did testify that he walked through the clinic at least twice a day if not more. Respondent testified that he signed the drug testing notification form, the drug testing unit affidavit form, and that he initialed that he observed Mr. [REDACTED] seal his sample with a tamper evident tape.

Rebuttal witness for the Sheriff

Doctor [REDACTED] testified that he is currently employed at North Shore University Health Systems-OMEGA and that he is the Director of Medical Toxicology for the group. The witness went onto testify about his job duties, his curriculum vitae and education. The witness testified about the standard of care in an occupational drug test. The witness was tendered as an expert and there was no objection. The witness testified about the differences between he and Dr. [REDACTED] that he was a physician and certified medical review officer whereas Dr. [REDACTED] was an analytical chemist. The witness testified that he is a medical toxicologist and that he translates what a lab says. The witness rebutted the Respondent's expert witness opinion was that he was the unknowing victim of inadvertent ingestion of aerosol cocaine. Dr. [REDACTED] testified that based on his experience and based on the standard of care of a medical review officer he could not envision how Dr. [REDACTED] opinion could be possible. Dr. [REDACTED] testified that his lab has thousands of tests a year and that it's pretty rare when they get a positive test for cocaine and that every single case it has been accurate and that he has never had a case where the test was inaccurate or a transient exposure. The witness went onto testify that he had worked in ER departments for over 17 years and that they had used cocaine for nose bleeds and for anesthetics and that he had been drug tested after working in the ER and he never tested positive. He testified that he did not know any emergency room physician that had ever tested positive. The witness then testified that the Respondent did not provide any valid reason why he had tested positive for cocaine and that as a standard of care and within a reasonable degree of scientific certainty he would call it a positive test.

Investigator [REDACTED] was called back as a rebuttal witness and testified that he never told the Respondent that he had tested positive for prescription drugs but had asked him if he was on any prescriptions.


Respondent called Dr. [REDACTED] who testified that he is a toxicologist and testified to his curriculum vitae. The witness described his educational background, his current position and his former position as the lab director at Stroger Hospital. Dr. [REDACTED] was tendered as an expert witness and there was no objection. Dr. [REDACTED] testified that Dr. [REDACTED]'s addendum to Phamatech's litigation package where he had to write that an incorrect name was printed on the internal transfer chain of custody was incorrect was not an acceptable drug screening protocol. Dr. [REDACTED] testified that he believed the retest was an outlier, meaning that something was wrong because of the large differences.

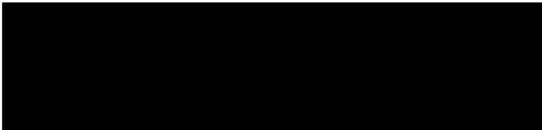
On cross examination the witness testified that Dr. [REDACTED]'s addendum was a significant error and that he would consider it pretty close to being a fatal flaw. The witness was asked about the RT number being wrong and whether that would invalidate the test and he testified no it would not be invalidated just written up.

Conclusions of Law: Based upon the evidence presented, and after assessing the credibility of the witnesses and weight to be given to the evidence in the record, the Merit Board finds that the Sheriff has proven by a preponderance of the evidence that the Respondent did violate each and every order, Sheriff's order and rule and regulation as set forth in the complaint filed herein.

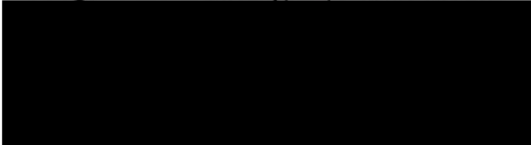
Order: Wherefore, based on the foregoing, it is hereby order that the Respondent Jack Porter be separated from employment effective May 20, 2014.

Jack Porter #1762

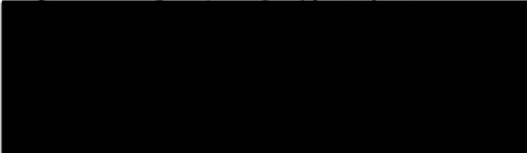

James P. Nally, Chairman


John Palicandro, Secretary

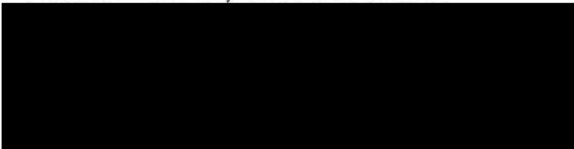

Vincent T. Winters, Board Member


Patrick Brady, Board Member


Byron Brazier, Vice-Chairman


Kim R. Widup, Board Member


Jennifer E. Bae, Board Member


Gray Mateo - Harris, Board Member

Date March 7, 2017

